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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/581,818 06/19/00 SAKAI

Y 000754

023850 MM91/0907
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EXAMINER

KAO, C

ART UNIT

PAPER NUMBER

2882

DATE MAILED:

09/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/581,818

Applicant(s)

SAKAI ET AL.

Examiner

Glen Kao

Art Unit

2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout and content for US patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
 1. Field of the Invention.
 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 6 recite the limitation "said light receiving windows" in claim 5, lines 2, 3, 5, and 6, and claim 6, line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's admission of prior art in view of Weber (US Patent 4,319,134).
4. Regarding claims 1-3, the applicant's admission of prior art discloses an encoder having a code pattern on a disk, which detects the rotation speed and position by receiving light from a light emitting element and transmitted through or reflected from the code pattern by the light receiving element, wherein a fixed slit having a plurality of light receiving windows is disposed between the disk and receiving element in order to have a difference in phase at different positions in the radial direction of the disk (Page 1, lines 8-18 and Fig. 7, #23). However, the applicant's admission of prior art does not disclose a plurality of windows disposed on the same

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radius with a length being shorter from the inner to outer peripheral side and the inner and outer opening areas being equal so the areas of different phases are the same.

It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to change the length and areas of the windows disposed on the same radius in combination with the encoder of the applicant's admission of prior art since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. One would be motivated to change the size of the windows to insure that an equal amount of sensor area is exposed to receive the light at all times, i.e. for all angular positions of the disk as taught by Weber (col. 8, lines 1-6 and Fig. 7, #19' and 35).

5. Regarding claims 4-6, the applicant's admission of prior art discloses an encoder having a code pattern on a disk, which detects the rotation speed and position by receiving light from a light emitting element and transmitted through or reflected from the code pattern by the light receiving element, wherein a plurality of light receiving portions is disposed between the disk and receiving element in order to have a difference in phase at different positions in the radial direction of the disk (Page 1, lines 8-18 and Fig. 7, #23). However, the applicant's admission of prior art does not disclose a plurality of portions disclosed on the same radius with a length being shorter from the inner to outer peripheral side and the inner and outer opening areas being equal so the areas of different phases are the same.

It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to change the length and areas of the portions disposed on the same radius in combination with the encoder of the applicant's admission of prior art since such a modification

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would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. One would be motivated to change the size of the portions to insure that an equal amount of sensor area is exposed to receive the light at all times, i.e. for all angular positions of the disk as taught by Weber (col. 8, lines 1-6 and Fig. 7, #19' and 35).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glen Kao whose telephone number is (703) 605-5298. The examiner can normally be reached on M - F (9 am to 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on (703) 305-3492. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



gk
September 3, 2001



ROBERT H. KIM
SUPERVISORY PATENT EXAMINER
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